IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1203 OF 2005

THE DECCAN CO-OP. SPINNING MILLS LTD. .. PETITIONER

Versus

INDUSTRIAL DEVELOPMENT BANK OF INDIA & ORS. .. RESPONDENTS

Ms. Varsha Palav for petitioner

Mr. Faisal Saiyyad i/b M. K. Ambalal for R

CORAM:-SMT. RANJANA DESAI &

A. S. OKA, JJ.

DATED:-19/11/2005

P.C.

. The Deccan Co-operative Spinning Mills Ltd. is a co-operative society registered under the Co-operative Societies Act, 1960. This petition is filed through Official Liquidator appointed under Section 103(1) of the said Act for winding up of the said society. The liquidator has impugned order dated 7/10/2004 passed by Debt Recovery Appellate Tribunal, Mumbai, whereby the Appellate Tribunal has confirmed the order passed by the Debt

Recovery Tribunal on 24/6/04.

2. It appears that the said society was facing severe financial difficulties. It could not pay the secured creditors, non-secured creditors, wages, taxes etc. Recovery proceedings were started by respondents 1 to 4. On 13/9/2002, the Debt Recovery Tribunal, Pune, issued a recovery certificate. The property came to be attached. The Liquidator made application before the Presiding Officer. He prayed that the liquidator had a paramount charge at 2% of the valuation of the properties of the said society and that claim must be first settled. That application came to be rejected on 18/3/2004. The liquidator preferred an appeal before the Debt Recovery Tribunal. That appeal came to be rejected. Being aggrieved by the said decision the liquidator filed appeal to the Debt Recovery Appeal Tribunal. That appeal also came to be rejected and hence this petition.

3. The main contention of the liquidator is that in view of the provisions of the Co-operative Societies Act, the liquidator appointed under the said Act should be permitted to proceed with the liquidation of the assets of the society. The

liquidator has further averred that the liquidator cannot be made to act as subordinate to the Recovery Officer of the Debt Recovery Tribunal. He has sought a stay of the recovery proceedings.

4. We are unable to entertain this petition in view of the judgment of the Supreme Court in **Allahabad Bank v. Canara Bank & Anr., (2000) 4 S C C 406** and Full Bench decision of this court in **Shri Narendra Kantilal Shah v. Joint Registrar Co-operative Societies (Appeal) Bombay & Ors., 2004 (1) ALL MR 798**. We may reproduce the relevant extracts of the said judgments which the Debt Recovery Appellate Tribunal has reproduced.

5. **In Allahabad Bank's case (supra)**, the Supreme Court has observed as under:

"Even where a winding up petition is pending or a winding up order has been passed against the debtor company, the adjudication of liability and execution of the certificate in respect of debt payable to the banks and financial institutions are respectively within the exclusive jurisdiction of the Debts Recovery Tribunal and the Recovery Officer and in such a case the Company Court's

jurisdiction under section 442, 537 and 446 of the Companies Act stands ousted. Hence no leave of Company Court is necessary for initiating such proceedings under the RDB Act nor can the Company Court transfer to it or otherwise interfere with such proceedings".

. In **Narendra Kantilal Shah's case (supra)** this court has observed as under:

"As soon as Act of 1993 came into force, all remedies and powers available to Co-operative Banks and remedies provided by Maharashtra Co-operative Societies Act came to an end."

6. In view of this the petition is rejected.

(SMT. RANJANA DESAI,J.)

(A. S. OKA,J.)